

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELONDO BENTON,

Defendant-Appellant.

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UNPUBLISHED  
November 4, 1997

No. 196728  
Recorder's Court  
LC No. 95-011610

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83; MSA 28.278, first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to fifteen to twenty-five years' imprisonment for the assault with intent to commit murder conviction, seven to twenty years' imprisonment for the first-degree home invasion conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

First, defendant argues that the trial court abused its discretion when it granted the prosecutor's motion in limine to preclude any reference to the victim's drug-related criminal convictions. Defendant argues that the evidence was relevant to his defense that he was not involved in the offense and that the shooting of the victim was a result of the victim's drug-related activities. We find no abuse of discretion. Defendant's basic theory was that he was not involved in the shooting. The victim's criminal record tended neither to prove nor disprove that theory, so that the court's ruling did not impede defendant's ability to present his defense. In any event, defendant elicited testimony to the effect that the victim was a known drug dealer and thereafter argued to the jury that the shooting was solely the result of the victim's drug-related activities. Reversal is therefore not warranted on this ground.

Defendant next claims that instructional errors deprived him of a fair trial. First, he argues that it was error for the court to instruct the jury that, when determining intent, it could infer an intent to kill from the use of a dangerous weapon. Second, defendant contends that the court's editorializing while instructing on the lesser offense of assault with intent to do great bodily harm left the jury with the

impression that the lesser offense was not supported by the evidence. However, defendant did not object to either of these instructions and thus has failed to preserve the claims for appellate review. *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Because we find no error and no manifest injustice, this Court will not review defendant's claims of instructional error. *Id.*

Finally, defendant argues that the prosecutor made disparaging remarks about defense counsel and the veracity of defendant's witnesses, depriving him of a fair trial. We find no merit in defendant's claim. Once again, defendant's failure to object in the trial court limits our review of his claim on appeal. Absent an objection or a request for a curative instruction, this Court will not review alleged prosecutorial misconduct unless a curative instruction could not have eliminated the prejudicial effect, or the failure to consider the issue would result in a miscarriage of justice. *People v Nantelle*, 215 Mich App 77, 86; 544 NW2d 667 (1996). Neither situation is present here. A prosecutor may argue from the facts that a witness is not worthy of belief and may respond, in rebuttal, to arguments made by defense counsel. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996); *Kennebrew*, *supra*, p 607.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ David H. Sawyer

/s/ Janet T. Neff